



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

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**DIRECTOR'S POLICY**

**#100-06**

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**SUBPOENAS/SERVICE OF PROCESS/NOTICES**

**EFFECTIVE DATE:** November 12, 2002

**APPROVED BY:**

**I. HISTORY**

This policy replaces Director's Policy #100-06, Subpoenas/Service of Process/Notices, effective January 4, 2000.

**II. PURPOSE**

The purpose of this policy is to provide Department of Professional and Occupational Regulation employees with procedures for receiving and responding to subpoenas, process or notice. This policy shall supplement Director's Policy #100-04, Release of Information to specifically address the handling of subpoenas, process and notices served on, or received by the Department.

**III. POLICY**

The processing of all subpoenas and other notices served on the Department shall be handled in a timely and accurate manner according to the guidelines set within this policy. When notification of counsel is required, original documents shall be hand delivered to the Office of the Attorney General within one day of service on, or receipt within the Department.

**IV. DEFINITIONS**

**Appeal**

A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, especially the submission of a Department or board decision to a higher court for review and possible reversal.

<b>Long Arm Statute</b>	A statute providing for jurisdiction over a nonresident defendant who has had contacts with the territory where the statute is in effect. The law permits courts to acquire personal jurisdiction of non-residents by virtue of activity in the state.
<b>Notice of Appeal</b>	A document that comports with all the elements of Rule 2A:2 of the <i>Rules of the Virginia Supreme Court</i> served on the Director, stating an intention to appeal a decision by the Department or regulatory board.
<b>Petition of Appeal</b>	A document filed with a court and served on the Director and all involved parties, appealing a decision by the Department or regulatory board.
<b>Process</b>	A summons, writ, warrant, or mandate to appear or respond in court.
<b>Service of Process</b>	The formal delivery of a writ, summons or other legal notice. The delivery may be made on either an official authorized to accept (the Director or his designee), or on the party to whom it is directed.
<b>Subpoena</b>	A writ commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.
<b>Subpoena duces tecum</b>	A writ commanding production of documents or material relevant to facts in issue in a pending judicial proceeding.

## **V. PROCEDURES**

### **A. Director's Office**

1. All service shall be accepted by the Director's Office. Reception Desk personnel may accept service during regular business hours (8:15 a.m. to 5:00 p.m.) only when the Director's Office is closed.
2. The Director's Office shall indicate the date, time, method of receipt, and person accepting the document on the front page of the subpoena, process or notice.
3. The Director's Office shall immediately forward all non-personnel service to the Public Records Administrator. In the Public Records Administrator's absence, all documents shall be forwarded to the Policy, Planning and Public Records Director or Deputy Director for Enforcement.

4. The Director's Office shall send a facsimile of all service involving personnel matters to the Office of the Attorney General and immediately forward the documents to the Personnel Office.

**B. Public Records Section**

The Public Records Administrator shall review all service to identify documents that warrant delivery to the Office of the Attorney General; and determine whether testimony and/or records are required, and the appropriate individual/section to receive the service. In the absence of the Public Records Administrator, the Policy, Planning and Public Records Director or the Deputy Director for Enforcement shall perform the initial review. The Public Records Section shall maintain a copy of all documents and a computerized log for tracking all service received by the Department.

**1. Subpoena duces tecum**

- a) All records released in response to a subpoena duces tecum shall bear the official Department seal and be authenticated on the face of the documents as true copies of the original records by the record custodian and the person to whom the record custodian reports (§54.1-112 of the *Code of Virginia*).
- b) A subpoena duces tecum for information that is statutorily exempt from public disclosure under the Virginia Freedom of Information Act, Title 54.1 of the *Code of Virginia* and other applicable statutes shall be handled in the following manner:
  - (1) Within one day of receipt, the Public Records Administrator shall mail a letter to the involved regulant, with a copy to the regulant's attorney (if known or shown on the subpoena), the clerk of the court and the issuing party advising the regulant of the following:
    - (a) The Department received a subpoena duces tecum for records (include list) that may be exempt from disclosure under the provisions of § 54.1-108 of the *Code of Virginia*.
    - (b) The Department intends to comply with the subpoena unless the regulant (or his attorney) advises the Department of their objection to the subpoena.
    - (c) It is the responsibility of the regulant to file an objection to the subpoena in court.

- (d) The regulant (or his attorney) must notify the Department in writing of their intention to file an objection with the court.
  - (e) The date by which the Department must receive notification of the regulant's intent to object to the subpoena duces tecum in order that a proper response to the subpoena may be prepared and delivered.
- (2) If no response is received by the specified date, the Department shall comply with the terms of the subpoena duces tecum.
  - (3) Upon receipt of an adequate objection or motion to quash from the regulant's attorney, the subpoena response shall be prepared in the following manner:
    - (a) All documents shall be copied and certified pursuant to § 54.1-112 of the *Code of Virginia*.
    - (b) All "objectionable" (including non-FOIA exempt) documents shall be placed in a large sealed envelope. The front of the envelope shall include the style of the case; name of the court; and identification of the contents (i.e., "Documents presented to the Court by the Department of Professional and Occupational Regulation pursuant to subpoena duces tecum issued on (date) by (issuing party).").
    - (c) A transmittal letter to the Clerk of the Court with a copy to all parties and their attorneys (if represented by counsel) stating that "The Department of Professional and Occupational Regulation has been notified by (the name of the regulant or attorney) of his/her intent to object to the release of the following documents pursuant to the subpoena: (list documents). The documents are hereby being delivered to the court in the attached sealed envelope."
    - (d) A copy of the letter or motion from the regulant or attorney shall be attached to the Department's transmittal letter.
    - (e) All records not included in the objection shall be copied, certified and delivered to the court with the sealed envelope.
- c) Exemptions from disclosure under § 54.1-108.2 & § 54.1-108.3 of the *Code of Virginia* do not apply to subpoenas for a regulant's application issued on behalf of the regulant or subpoenas for an open/active investigation files issued on behalf of the named respondent in the file.

- d) Appropriate charges for subpoenaed information shall be assessed in accordance with Policy #100-04, Release of Information.

## **2. Testimony**

- a) The Public Records Administrator, upon request by the subpoenaed individual, shall contact the issuing party to determine if a License Transcript or other authenticated records (§54.1-112) would be an acceptable alternative to personal testimony. The Public Records Administrator shall be responsible for obtaining the proper written releases from a subpoena if License Transcripts or other records are to be substituted for the requested testimony.
- b) The person named in the subpoena is responsible for assuring compliance with the terms of the subpoena. This includes being prepared to testify at any criminal, civil or administrative proceeding when the subpoena requires the person to appear and testify.

## **3. Appeals**

- a) After logging and copying the documents, the Public Records Administrator shall arrange for hand delivery of all original copies of Notices/Petitions of Appeal of board case decisions to the Office of the Attorney General. A copy of the notice/petition and the OAG transmittal letter shall be forwarded to the appropriate Board Administrator. Copies of Real Estate or Contractors Transaction Recovery Fund Appeals shall be forwarded to the Recovery Fund Administrator.
- b) Within two days of receiving a Notice/Petition of Appeal, the appropriate administrator is responsible for contacting the Office of the Attorney General and coordinating any response and appeal record preparation with that office. The appropriate Administrator is responsible for preparing and certifying the appeal record according to any requirements set forth by the Office of the Attorney General and Rule 2A:3 of the *Rules of the Supreme Court of Virginia* (see Procedures for Preparation of Records on Appeal in the shared I:\Procedures folder). Each Administrator shall designate a person who shall be responsible for record preparation in their absence.

## **4. Long Arm Statute Compliance**

- a) The Public Records Administrator shall forward all process served on the Department pursuant to Title 54.1 to the appropriate Board Administrator to ensure timely forwarding to the licensee's last known address of record.

- b) The Board Administrator shall retain any undelivered documents that are returned to the Department for a period of three years.

**C. Matters to be referred immediately to the Office of the Attorney General**

1. The Public Records Administrator is responsible for hand delivery of original service to the Office of the Attorney General in the following situations:
  - a) Appeals of case decisions involving an applicant or licensee.
  - b) Appeals of case decisions involving the Real Estate or Contractors Transaction Recovery Fund.
  - c) Service on the Director pursuant to the Long Arm Statutes in Title 54.1 of the *Code of Virginia*.
  - d) Any service, which names the Department, any regulatory board within the Department, any board member, or any Department employee as a defendant.
  - e) Service on any board member.
  - f) Service or delivery of any documents, notices, etc. that call for a Department response within a specified period of time.
  - g) A subpoena duces tecum for information statutorily exempt from public disclosure under the Freedom of Information Act, Title 54.1 of the *Code of Virginia*, and other applicable statutes that may compromise the integrity of the Department's licensure, mediation, conciliation, or enforcement processes (i.e., examinations; confidential dispute resolution materials; active investigations of unlicensed activity; etc.).
  - h) A subpoena duces tecum served upon the Department less than five workdays prior to the date for compliance.
2. In situations when the time for compliance with a subpoena duces tecum issued by an attorney (pursuant to § 16.1-89 of the *Code of Virginia*) is less than fourteen days after service of the subpoena and the Director deems there are grounds for objecting to the subpoena, the Policy, Planning and Public Records Director shall contact the Office of the Attorney General.
3. The Policy, Planning and Public Records Director shall immediately notify the Office of the Attorney General of any service received by the Department that is not covered in Sections B or C.

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